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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   WILLIAM SCOTT,

11                   Plaintiff,

12                   v.

13                   KING COUNTY; DEPUTY DAVID CISSNA;  
14                   and UNKNOWN OFFICERS,

15                   Defendants.

16                   CASE NO. C11-921RSM

17                   ORDER ON SUMMARY JUDGMENT

18         Plaintiff William Scott, appearing through counsel, filed this complaint for civil rights violations  
19         and assault and battery. Dkt. # 1. He invokes the jurisdiction of this Court pursuant to 41 U.S.C. § 1983  
20         and supplemental jurisdiction pursuant to 28 U.S.C. § 1337 over the state law claim. The complaint  
21         arises from an event that occurred on June 21, 2008, when plaintiff was hit in the leg by a patrol car  
22         while fleeing on foot from impending arrest. Plaintiff asserts that he was subjected to excessive force  
23         within the meaning of the Fourth Amendment when he was pinned against a wall by the patrol car until  
24         an ambulance arrived to take him to the hospital to treat his broken leg. Plaintiff subsequently entered a  
25         plea of guilty to charges of taking a motor vehicle without permission, attempting to elude pursuit, and  
negligent driving, and was sentenced to a term of twenty-nine months.

26         Defendants moved for summary judgment, contending that (1) plaintiff was not “seized” within  
27         the meaning of the Fourth Amendment because Officer Cissna did not intentionally strike and pin  
28         plaintiff; instead he lost control of the car when he rounded a corner and braked suddenly to avoid

1 hitting the car that plaintiff had abandoned; and (2) Officer Cissna is shielded from liability by qualified  
2 immunity. Defendant also moved for summary judgment on the assault and battery claim as barred by  
3 the applicable two-year statute of limitations. Defendant properly supported the summary judgment  
4 motion with a declaration by Officer Cissna, explaining the factual basis for the motion, particularly the  
5 facts regarding his lack of intent to hit plaintiff and his concern that moving the car to free plaintiff  
6 before aid arrived could cause further injury. Fed.R.Civ.P. 56(c); Declaration of David Cissna, Dkt. # 9.

7 Plaintiff filed a brief opposition to the motion, with the conclusory assertion that there are factual  
8 issues regarding whether Officer Cissna struck plaintiff purposefully to punish him for fleeing, and also  
9 whether he kept his vehicle in position to pin plaintiff for “improper reasons.” Plaintiff’s Opposition,  
10 Dkt. # 13, p. 2. Plaintiff did not present any evidence to controvert Officer Cissna’s sworn declaration  
11 or otherwise create a factual issue, but he asked for a continuance pursuant to “Rule 56(f)” [sic] so that  
12 counsel could contact his client (who was incarcerated at the time this action was filed) to obtain  
13 evidence. *Id.* The balance of plaintiff’s opposition contains dates and references which appear to be  
14 from a different case,<sup>1</sup> and cite to a prior version of Rule 56. Dkt. # 13, pp. 2-5.

15 Plaintiff's opposition was supported by declaration of counsel, noting that by agreement, no  
16 discovery has taken place, and stating that "I believe that I can clear this matter up and discover what  
17 actually happened once I am able to review this matter and defendants' motion with my client. At the  
18 very least, I would like the opportunity to obtain a declaration from plaintiff and to depose the deputy."  
19 Declaration of Darryl Parker, Dkt. # 16, ¶ 6.

20 In response, defendants re-noted the summary judgment motion to December 9, 2011, giving  
21 plaintiff an additional three months beyond the original noting date to respond. Dkt. # 20. Defense  
22 counsel also communicated with counsel for plaintiff several times in October 2011, advising counsel of  
23 plaintiff's address following his release from incarceration. Declaration of Daniel Kinerk, Dkt. ## 22,  
24 23. Nevertheless, plaintiff has not responded further to the motion for summary judgment, despite  
25 being given additional time as requested.

<sup>27</sup> Plaintiff states that this case was filed on June 5, 2009, and trial is set for October 25, 2010.  
<sup>28</sup> Dkt. # 13, p. 2. Actually, the complaint in this action was filed June 2, 2011, and no trial date has been set.

1 Pursuant to Local Rule CR 7(b)(2), failure to file papers in opposition to a motion may be  
2 deemed by the Court as an admission that the motion has merit. Plaintiff here is represented by counsel  
3 who, as a member of the bar of this Court, must be familiar with this rule. Local Rule GR 2(e)(1). The  
4 Court therefore finds it appropriate to deem plaintiff's lack of opposition as an admission that the  
5 motion for summary judgment has merit.

6 Accordingly, defendants' properly supported motion for summary judgment (Dkt. # 7) is  
7 GRANTED, and this action is hereby DISMISSED. The Clerk shall enter judgment in favor of  
8 defendant on all claims.

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10 DATED this 10 day of January 2012.

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12 RICARDO S. MARTINEZ  
13 UNITED STATES DISTRICT JUDGE  
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